

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY)	
AVERAGE WHOLESALE PRICE)	MDL No. 1456
LITIGATION)	
)	CIVIL ACTION: 01-CV-12257-PBS
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THIS DOCUMENT RELATES TO:)	Judge Patti B. Saris
ALL CLASS ACTIONS)	
)	

**CLASS PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT
ON DEFENDANTS' AFFIRMATIVE DEFENSES**

Class Plaintiffs, pursuant to Fed. R. Civ., P 56, move for Summary Judgment dismissing most of the affirmative defenses. The fifty eight (58) separate affirmative defenses, raised by Defendants, do not belong in this case because (1) they are barred by prior rulings of the Court (e.g., Plaintiffs fail to state a claim under Rule 12(b)(6)); (2) Defendants have not and can not meet their burden in establishing the alleged affirmative defense; or (3) some of the affirmative defenses are general denials and not "affirmative defenses." If granted, this motion will winnow down the triable issues and scope of jury instructions.

DATED: March 15, 2006

By /s/ Steve W. Berman
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CERTIFICATE OF SERVICE BY LEXISNEXIS FILE & SERVE

Docket No. MDL 1456

I, Steve W. Berman, hereby certify that I am one of plaintiffs' attorneys and that, on March 15, 2006, I caused copies of **CLASS PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON DEFENDANTS' AFFIRMATIVE DEFENSES** to be served on all counsel of record by causing same to be posted electronically via Lexis-Nexis File & Serve.

/s/ Steve W. Berman

Steve W. Berman